IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1573 OF 2003

The State of Maharashtra ..Appellant

Vs.

Smt.Sunanda Dhondu
Ambre & Ors. ..Respondents

...

Mr.M.S.Mhambaray, A.P.P. for the State
Mr.S.V.Marwadi for Respondent

...

CORAM: SMT.V.K.TAHILRAMANI,J.

DATE : JULY 18,2005

P.C.

1. Heard the learned A.P.P. for the Appellant-State of Maharashtra, Mr.Marwadi, the learned advocate for the respondents-original accused nos.2 to 4 and perused the evidence.

2. Being aggrieved by the judgment and order dated 19/20th March, 2003 in Cri.Appeal No. 200 of 2001 passed by the learned Sessions Judge, Gr.Mumbai.

This appeal has been preferred by the State of Maharashtra. By the said judgment and order, the learned Sessions Judge allowed the said appeal in respect of three appellants i.e. Sunanda Dhondu Ambre, Nandkishor Dhondu Ambre and Sharad Appa Karle i.e. original accused nos.2 to 4 and acquitted all the appellants under Section 325 of IPC. Original accused no.1 Savitri Appa Karle had expired during the pendency of the trial.

3. Mr.Marwadi states that respondent no.1 Smt.Sunanda Dhondu Ambre expired on 4.6.2005. The death certificate of Smt.Sunanda Ambre is produced, xerox copy of the said certificate is taken on record and marked ‘X’ for identification. In this view of the matter, the appeal abates as far as the respondent no.1 Smt.Sunanda Ambre is concerned.

4. It is the case of the prosecution that the complainant P.W.1 Ms.Rajani Karle was assaulted by the accused persons with fist and hockey sticks at about 9 p.m. on 22.3.1990 near her residence. The complainant received injuries hence, she was removed to Bhabha Hospital, Mumbai. There, she

came to be treated. The injuries on the person of Rajani Karle were in the nature of abrasion and tenderness. Besides this, there was swelling on the upper rib and over the right eye. Internal examination revealed fracture of a rib.

5. First of all, in the present case, there is delay of six days in lodging the FIR. The explanation given by the prosecution for the delay in the light of the evidence on record, does not appear to be plausible. Moreover, it is the specific case of the complainant Rajani that she was assaulted by fist blows and hockey sticks. However, in the cross-examination she has stated that the medical history of assault with hockey sticks revealed to the Medical Officer was a false statement. Thus as per the case of the complainant as seen from the cross-examination, it appears that she was assaulted only by fist blows. As far as P.W.2 Vinayak Karle is concerned i.e. brother of Rajani Karle, according to him, he was assaulted with a hockey stick by the accused Nandu Ambre. However, he could not assign any reason why the police had not recorded this aspect in his

statement that accused Nandu assaulted him with hockey stick. Moreover, there is no medical evidence on record to corroborate the fact of assault with hockey stick of P.W.2 Vinayak Karle.

6. It is true that a fracture of rib was detected in respect of complainant P.W.1 Rajani Karle. However, it is pertinent to note that P.W.6 Dr.Jain and P.W.7 Dr.Modhe were of the unanimous opinion that such fracture could be caused if person falls on a hard and slippery slope. P.W.6 Dr.Jain has further deposed that if person is assaulted with a hockey stick with force, the result would be a fracture leaving weal marks at the place of impact. In the present case, no weal marks were noticed on the person of Rajani Karle. The most glaring aspect is that there is a delay of six days in lodging the complaint. The said delay has not been sufficiently explained. In this view of the matter, I am of the opinion that the view taken by the learned Sessions Judge is a reasonable and possible view.

7. It is well settled that if the view of

acquittal could have been reasonably arrived at then the mere circumstance that the appellate Court would have taken a different view, would be no ground to interfere. In this connection, there is no dearth of authorities but to eschew prolixity, I am referring to only two of them i.e. **AIR 1971 S.C. 66 Khedu Mohton and Ors. Vs. State of Bihar and C.Anthony Vs. K.G.Raghavan Nair (2003) 1 SCC 1.** In the case of **C. Anthony,** the Supreme Court has observed that unless the findings of the trial Court are perverse or contrary to the material on record, the High Court cannot in appeal substitute its findings, merely because another contrary opinion was possible on the basis of material on record. As stated earlier, the view taken by the learned Sessions Judge is a reasonable and possible view hence, no interference is called for. Appeal is dismissed.

[V.K.TAHILRAMANI,J.]